

**REMARKS**

This Preliminary Amendment is being submitted in response to the recent Board of Appeal decisions in U.S. Patent applications 10/000,311; 09/771,938; and 09/772,520 and the applicability of the reasoning of those Board decisions to the claims and arguments in the present case. Applicants respectfully submit that this Preliminary Amendment will not unduly interfere with the preparation of the first Office Action.

The present application relates to inbred maize line PH5FW. Claims 1-10 are pending in the present application. Claims 7 and 9 have been amended. Applicants acknowledge the addition of claims 11 through 34. The new claims do not add new matter as there is support for the claims in the originally filed specification. Support for the specific items can be found within the specification for herbicide tolerance on pages 44-46; insect resistance and resistance to bacterial, fungal, nematode or viral disease on pages 40-44; yield enhancement on pages 35-36; waxy starch and improved nutritional quality on pages 35-36; male sterility on pages 2-4 and 48; restoration of male fertility on pages 2-4; and 0-5 generations on pages 4-8. In addition, Applicants have amended the specification to clarify the deposit language. Applicants have also amended the specification on page 59, to remove the hyperlink and instead just recite the Internet address as in accordance with MPEP §608.01. No new matter has been added. Entry of this Preliminary Amendment and approval of the changes is respectfully requested.

In conclusion, Applicants submit in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

Please charge Deposit Account No. 26-0084 the amount of \$1,100.00 for 14 new claims over 20 (\$50 each) and 2 new independent claims over 3 (\$200 each). No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



Lila A. T. Akrad, Reg. No. 52,550  
McKee, Voorhees & Sease, P.L.C.  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No: (515) 288-3667  
Fax No: (515) 288-1338  
**CUSTOMER NO: 27142**

- LATA / bja -

Attorneys of Record